

JUDICIAL QUALIFICATIONS COMMISSION
Tallahassee, Florida

INQUIRY CONCERNING A JUDGE,

NO. 09-374

TRANSCRIPT OF: TESTIMONY AND PROCEEDINGS

BEFORE: The Judicial Qualifications
Investigative Hearing Panel

DATE: November 6, 2009

PLACE: Tampa Airport Marriott
Tampa International Airport
Lee Room
Tampa, Florida

TIME: 9:40 a.m. to 10:50 a.m.

REPORTED BY: Felicia A. Newland
Notary Public
State of Florida at Large

ORIGINAL

RICHARD LEE REPORTING
(813) 229-1588

TAMPA:
100 North Tampa Street, Suite 2060
Tampa, Florida 33602

email: rlr@richardleereporting.com

ST. PETERSBURG:
535 Central Avenue
St. Petersburg, Florida 33701

PANEL MEMBERS PRESENT:

Miles McGrane, Chair
John P. Cardillo, Esquire
Judge Thomas B. Freeman
Judge Morris Silberman
Dr. Steve Maxwell
Judge Preston Silvernail (by telephone)
Ricardo Morales, III
Judge James R. Wolfe
Dr. Leonard Haber

ALSO PRESENT: Brooke Kennerly, Executive Director
Michael L. Schneider, Esquire

APPEARANCES: Judge Dale Cohen, Respondent

1 The transcript of testimony and proceedings
2 before the Florida Judicial Qualifications
3 Commission, taken on the 6th day of November, 2009,
4 at the Tampa Airport Marriott, Tampa International
5 Airport, Lee Room, Tampa, Florida, beginning at 9:40
6 a.m., reported by Felicia A. Newland, Notary Public,
7 in and for the State of Florida at Large.

8 * * * * *

9 P R O C E E D I N G S

10 THE CHAIR: Good morning, Judge.

11 THE RESPONDENT: Good morning.

12 THE CHAIR: Judge, my name is Miles
13 McGrane. I'm Chair of the JQC. You're here
14 today under the rule of a 6(b) notice of
15 investigation.

16 What I'd like to do is introduce the
17 panel commission to you. Starting at your
18 left, my right, is Judge Silberman, district
19 court judge; John Cardillo, who is an appointee
20 from the Florida Bar; Tom Freeman, who is a
21 county court judge; Michael Schneider, who is
22 general counsel. Sitting to my left is Brooke
23 Kennerly, the executive director. We have Dr.
24 Steve Maxwell, who's the governor's appointee;
25 Judge Wolf, district court judge; Rick Morales,

1 who is the appointee of the governor; and Dr.
2 Haber. Dr. Haber is an appointee of the
3 governor. And on the speakerphone, we have a
4 circuit court judge, Judge Silvernail, who is
5 attending by phone.

6 JUDGE SILVERNAIL: Good morning.

7 THE RESPONDENT: Good morning.

8 THE CHAIR: Judge, you've got a right to
9 open with a statement if you wish. And you can
10 do this under oath or not under oath. The
11 choice is yours. How would you like to
12 proceed?

13 THE RESPONDENT: I'll do it under oath.

14 * * * * *

15 HONORABLE DALE COHEN,

16 being first duly sworn to testify to the truth, the
17 whole truth, and nothing but the truth, was examined
18 and testified as follows:

19 THE CHAIR: Okay. Have you had an
20 opportunity to read the notice of
21 investigation?

22 THE RESPONDENT: Yes, I have. I do have
23 case law that I'd like to pass out, if I can,
24 so you can follow my argument.

25 THE CHAIR: Sure.

1 THE RESPONDENT: There's four.

2 THE CHAIR: All right.

3 THE RESPONDENT: And before I begin,
4 there's an error on the transcript. I just
5 want to correct the error because the court
6 reporter took down some wording wrong. On page
7 13 of the transcript, line 25 -- I'll wait for
8 you to get -- it's in my packet in case you
9 don't have the transcript.

10 THE CHAIR: I'm sorry. What page?

11 THE RESPONDENT: It's page 13, line 25.
12 There's some reference to Judge Gold. I said
13 judge school. And that's important because --
14 school for the court reporter, s-c -- I call
15 judicial college judge school.

16 MR. CARDILLO: Oh, judge school.

17 THE RESPONDENT: Yeah. And she said
18 Judge Gold. And they posted the transcript on
19 a blog a couple of days after this happened,
20 and I was walking in the courthouse with Judge
21 Gold, and he asked me, "How did my name come
22 in?" And I said, "No. I believe I said judge
23 school."

24 All right. Let me tell you first why I
25 had the hearing, and then I'll explain why I

1 believe, legally, I have the right to have had
2 the hearing, and I want to talk about the
3 hearing if you'll allow.

4 First of all, the reason why I had the
5 hearing was, the criminal law community in
6 Broward County is relatively small. I started
7 as prosecutor in the Broward County State
8 Attorney's office. I worked there for about
9 three-and-a-half years. I knew all the
10 prosecutors, I knew all the criminal defense
11 lawyers, and I practiced criminal law in
12 Broward for 20 years, being in the courthouse
13 nearly every day. I knew the lawyers, the
14 clerks, the bailiffs, the prosecutors, and I
15 was friendly with everybody. In criminal -- I
16 don't know if anybody practiced criminal, but
17 you deal with the same lawyers on a daily
18 basis, and if you're rude to them, you're just
19 going to deal with them on 20 more cases in the
20 future. It just doesn't make any sense to do
21 so.

22 And I could pretty honestly say I was
23 friends with almost everybody in the criminal
24 system, including Steve Melnick, who filed this
25 motion, and others that opposed my wife in the

1 election.

2 Steve and a couple of other lawyers were
3 filing motions to recuse after my wife's
4 election because they thought because they
5 helped her opponent, that I couldn't be fair.
6 And I want you to know I granted every single
7 one of those motions, whether they were legally
8 sufficient or not. I was granting them down
9 the line. After a few months, all the other
10 attorneys stopped filing those motions and just
11 held cases in my division normally.

12 Steve Melnick, on occasion, would file a
13 motion, on occasion would not. It seemed like
14 he was picking and choosing his cases. I
15 didn't even give it a second thought. About
16 two months before, I had -- let me just say, I
17 had no animosity with Steve Melnick whatsoever.
18 He would run into me in the courthouse all the
19 time, I'd see him in the elevator, he would
20 apologize for filing the motions. I would say,
21 "Don't worry about it. It's fine. There's no
22 animosity at all."

23 About two months before this incident
24 happened, he sent a client into an arraignment
25 and never filed any paperwork. He gave the

1 client a notice of appearance and a motion to
2 recuse. Which is fine, you can do that. The
3 problem was that the State had changed the
4 charge from what the officer charged to what
5 the State charged, and that creates a capias,
6 or a warrant, outstanding for the defendant.

7 Now, in Broward, if you come in with an
8 affidavit from the bondsman saying the bondsman
9 will stay on the bond from the original bond to
10 the new case, we accept that, the person
11 leaves, everything's fine. If the bondsman
12 doesn't accept it, then the person gets taken
13 into custody.

14 Well, he filed a motion to recuse, and I
15 was put in a situation where if I do nothing
16 like I'm supposed to do and we assign the
17 case, this guy goes to jail for two weeks. And
18 I know I've got a problem when I know it's a
19 ministerial act, and when I look at the
20 affidavit and approve it. And I know I wasn't
21 supposed to, but I looked at the affidavit. I
22 said, "I'm going to hold off on the motion to
23 recuse." I looked at the affidavit, approved
24 it so the guy wouldn't sit in jail two weeks,
25 and then I granted the motion to recuse

1 immediately thereafter.

2 And I called Steve and said, "You can't
3 put me in a bad situation like this. You've
4 got to show up for court."

5 But there's no animosity. In fact, any
6 animosity towards Steve, I easily could have
7 said, "I'm granting the motion. There's a
8 capias," and that guy would have gone to jail
9 for two weeks.

10 The date that this specifically happened,
11 I had a docket which ended about 12:30 that
12 morning. He shows up at 12:20, ten minutes
13 before the docket's over, walks over to my
14 clerk and gives her three motions to recuse,
15 all on cases that weren't on the docket. So I
16 asked him, "Well, why don't you just come back
17 at 1:30 and we'll address your motions to
18 recuse."

19 Unfortunately, I guess, I was having
20 lunch with my wife that day, and I said, "Why
21 don't you come by at 1:30" -- because I just
22 wanted to clear things up. I was friends with
23 Steve Melnick before. No animosity. The
24 allegations in his motion to recuse I didn't
25 think were -- well, they weren't accurate or

1 they were exaggerated. And I thought, well, if
2 he heard my wife, he would realize what he was
3 writing wasn't true and we would get past it,
4 he wouldn't file them anymore and this would
5 clear it up. I thought whatever disagreement
6 he had, I thought if he heard from my wife and
7 he got to speak, that would be it, and it would
8 go.

9 And we actually had the hearing. And
10 here's where I'm stupid, because I actually
11 thought after this hearing, I thought it was
12 cleared up. But apparently not, because he
13 went to the chief criminal administrative judge
14 and complained that I had a hearing. So I had
15 a hearing with the chief criminal
16 administrative judge, who told me, "You can't
17 have hearings if somebody files a motion to
18 recuse."

19 And I told Ilona Holmes that's not what
20 we're taught in judicial college. I'm going to
21 get to that argument, I do have a right to have
22 a hearing.

23 In any event, once I found out he was
24 upset, I called Melnick's office. I
25 apologized. I told him the only reason that I

1 had a hearing was to clear up our friendship.
2 We've been friends for 20 years. And I just
3 think things got out of control. I apologized.
4 And I agreed to blanketly agree to recuse
5 myself on all of his cases in the future.

6 Now, here's the -- let me -- let me
7 explain to you why I think legally I am
8 justified in having that hearing. The notice
9 of investigation presupposes that Mr. Melnick's
10 notice is legally sufficient. If it's not
11 legally sufficient, then I do have the right to
12 have a hearing. Now, if I have a hearing, my
13 understanding is I have to grant it if I'm
14 going to dispute the facts whatsoever.

15 So let me tell you why I don't think that
16 his motion is legally sufficient. And I
17 provided you all with an argument and some case
18 law as to why his motion is not legally
19 sufficient. There's a Raybon case versus
20 Burnette, which plaintiff's attorneys and
21 defendant's attorneys were both heavily
22 involved in the campaigns of one sitting judge
23 and one person challenging that judge.

24 In the Raybon -- which is good law, and
25 the law firms apparently were heavily involved,

1 not just making contribution or doing some
2 small act -- and the Court said that that alone
3 is not legally sufficient to support a motion
4 for disqualification.

5 I also provided you May versus South
6 Florida Water, where the filing of a lawsuit
7 against the judge by and of itself is not
8 legally sufficient to warrant disqualification.

9 I gave you Braynen v. State, where the
10 attorney was a member of a steering committee.
11 There was 34 people on the steering committee
12 opposing a judge. That judge won the election.
13 Apparently, she filed a motion to recuse. And
14 that Court also said that that alone is not
15 enough, there must be a substantial
16 relationship to support the disqualification.

17 And I provided you Milmir -- and you have
18 copies of all of these in the packet that I
19 gave you -- where a senior partner of a law
20 firm was on the state nominating commission
21 that reviewed the merit retention of the judge.
22 The attorney for that law firm, that person
23 opposed the judge's retention, and a lawyer
24 filed a motion to disqualify that judge, saying
25 that there would be bias, and the appellate

1 court said, "No, that's not legally
2 sufficient."

3 Again, Mt. Sinai Center, here an attorney
4 sought recusal because they had actively
5 participated in the magistrate's failure to be
6 recommended or reappointed by the JNC. And
7 again they found that that was not legally
8 sufficient.

9 Here, in Melnick's motion to recuse, he
10 did substantially less than any of these people
11 did. He held a fundraiser -- basically what
12 he -- all he did was he held a fundraiser for
13 the opponent to my wife. Unfortunately, he,
14 in the fundraising -- in the poster for the
15 fundraiser, he said, "Re-elect Judge Dijols,"
16 and Judge Dijols had never been elected, he was
17 appointed. It should have said, "Retain."

18 And re-elect when it's a retained is a
19 violation of the rules. And my wife called
20 Melnick up and said, "You need to change the
21 flyer." And that's when their conversation
22 took place. And even if you believe Melnick,
23 he wrote that my wife said, "And you can get in
24 trouble." I think was the quote. It's in
25 there. But that's not enough for recusal.

1 Melnick went to a recount and he talked
2 to -- supposedly he did research regarding a
3 lawsuit against my wife after the recount.
4 Bill Scherer was the attorney that did the
5 lawsuit. Bill Scherer has got a substantial
6 firm in Fort Lauderdale. Bill Scherer hired
7 Bruce Rogow, who's the number one
8 constitutional lawyer in Broward County, and
9 Bill Scherer and Bruce Rogow were the ones who
10 filed suit against my wife.

11 Bill Scherer and Bruce Rogow brought
12 their entire firm to the hearing. Melnick was
13 never at the hearing. Melnick was never even
14 in the courtroom. I was in the courtroom
15 watching. Melnick was never in there. Melnick
16 was not part of the lawsuit, and Melnick's name
17 is nowhere to be found.

18 Even if it was, there's -- I mean,
19 there's still the case where filing a lawsuit
20 against the judge, that May versus South
21 Florida Water, is not legally sufficient.

22 In any event, let me take you to what
23 they taught us in judicial college. And I
24 brought you the materials from the judicial
25 college. And I'm going to ask you to draw your

1 attention to page 6 -- I didn't copy the entire
2 thing, I only copied the pertinent part --
3 because I followed this, "How to handle a
4 motion for disqualification. 1. Stop what
5 you're doing and rule on a motion, don't handle
6 anything else."

7 And that's what I did. I didn't address
8 anything else, I just ruled on the motion.
9 Number two says you've got to do it within 30
10 days. I did it within an hour.

11 Number three, it's got to be done by the
12 judge who it's directed against. I did that.
13 Obviously that was me, unfortunately.

14 Four, say nothing. Take the motion to
15 chambers. They say don't take it personally.
16 Let me draw your attention to B, "DO NOT HOLD A
17 HEARING. Ruling on a motion for
18 disqualification does not require a hearing,
19 oral argument."

20 What that tells me is you shouldn't --
21 the better practice is not to hold the hearing,
22 but it doesn't say you can't hold a hearing.
23 It says it doesn't require one. So to me, that
24 means you can have one. It's discretionary.

25 It's not the better practice. I

1 understand it's not the better practice, but it
2 shows that 3(b) -- I mean, 4(b) shows that it's
3 discretionary to hold the hearing.

4 And let me take you to the next page,
5 eight of 47. In bold, "If you hold a
6 hearing" -- and it says -- "(strongly
7 discouraged), you must assume the facts in the
8 motion are true and you must limit the argument
9 to the issue of whether the stated grounds are
10 legally sufficient to require
11 disqualification."

12 This is what I was going on. This is
13 what I was taught at judicial college. Now, if
14 I misinterpreted what they told me, obviously
15 it's my fault and it's coming down on me, but I
16 was following what they taught me. And this
17 is -- and it says right here I can hold a
18 hearing.

19 Now, I called Judge Lisa Davidson, who
20 taught this class, because I wanted to get an
21 affidavit from her as well so I could present
22 that. Judge Davidson acknowledged that this is
23 what they taught, but she couldn't give me an
24 affidavit because I'm under investigation, and
25 I guess that would violate an ethical rule. I

1 don't know. I'm bad. I'm sorry.

2 I told her, "I don't want you to get in
3 trouble over what I did, so don't send me it.
4 That's fine."

5 You know, it's a complicated area of law.
6 There's an article in this week's Florida Bar
7 News, "To Recuse or Not To Recuse." I mean, it
8 just came out three days ago. I provided that
9 to you.

10 And finally, I just want to talk about
11 the hearing itself, and then you can drive over
12 me with a truck or whatever.

13 My purpose of the hearing was not to
14 embarrass him, it wasn't to create a hostile
15 court environment. He was my friend. I
16 considered him a friend. I wanted to maintain
17 a friendship. I had a conversation with him
18 before the hearing started. It wasn't on the
19 record because my wife was in another hearing.
20 It was nice. It was cordial. It was -- and I
21 realize he's -- I could have had a private
22 conversation with him in my chambers with my
23 wife there and just talked it out, but then --
24 you know, then I'd be -- I could be accused of
25 bullying him behind closed doors. What I did

1 was out in the open. I didn't think I was
2 doing anything wrong.

3 And if you read the transcript of the
4 hearing, I was very nice to him. I
5 purposefully didn't put him under oath because
6 I didn't want him to think that I was bullying
7 him or badgering him in any way.

8 He continuously cut me off during the
9 course of the hearing, and I let him do it
10 because, again, I didn't want him to think that
11 I was -- I didn't want to intimidate him in any
12 way. I just -- I just wanted to get it out
13 into the open. I wanted him to hear my wife's
14 side. I wanted my wife to hear his side. And
15 I just wanted to clear it up.

16 Probably not the best forum to do it. I
17 did not dispute one fact in that hearing. I
18 did not say, "Mr. Melnick, you're wrong." I
19 didn't say, "My wife is right." I just said,
20 "I'm not making any factual determinations.
21 I'm not saying anything, I'm just going to
22 grant it."

23 And on page 15 of that hearing, line
24 eight, I tell him, "I just wanted to flush
25 things out." That was my whole purpose. On

1 page 15, line nine, I told him, "You've been a
2 friend for 20 years. That's why I held the
3 hearing." And that's it.

4 I also have an -- it's not an excuse, but
5 I did some research on other judges who have
6 held hearings and made factual determinations
7 on motions to recuse. I didn't have a whole
8 lot of time because I did this yesterday, but I
9 have cases. And there's 25 judges, circuit
10 judges -- I didn't research county judges --
11 all that got reversed for having hearings,
12 challenging the factual determinations, and
13 then denying the motion.

14 I knew that once I had the motion, once I
15 held the hearing, I was required to grant the
16 motion. I knew that. And that's why I said, I
17 don't need to make any determination, just
18 holding the hearing required me to grant it.
19 But I didn't think I was violating any ethical
20 Canon by holding the hearing.

21 THE CHAIR: Judge --

22 THE RESPONDENT: The -- yes.

23 THE CHAIR: Forgive me.

24 THE RESPONDENT: The last thing I just
25 want to say is, you know, if I misinterpreted

1 what they taught me in judicial college or if
2 my understanding of the law was wrong, you
3 know, then I apologize to this committee.
4 I've already called Melnick. And I apologized
5 to him shortly after the hearing, because I
6 really -- it was more about friendship than it
7 was bullying.

8 I have no problem getting rid of cases.
9 I disqualified myself on all his previous
10 cases. Every lawyer that's filed a motion to
11 recuse, whether factually correct or not or
12 sufficient, I granted it. I don't have an ego.
13 I have the second highest caseload in Broward
14 County in the criminal division. I don't mind
15 getting rid of cases. I don't own these cases.
16 I don't feel like they're mine.

17 But that's why I had the hearing. It had
18 nothing to do with a hostile environment or
19 bullying him or anything like that.

20 And I will take questions.

21 THE CHAIR: Judge, you were here once
22 before.

23 THE RESPONDENT: Correct.

24 THE CHAIR: And back then, the issue, as
25 I remember, among other things, was the fact

1 that there was a photograph of you on your
2 wife's web page where you were in a robe. And
3 the other issue is you attending -- the other
4 issue was attending, I think, the counting of
5 the votes after the election, or it was
6 attending some meeting.

7 THE RESPONDENT: That wasn't part of the
8 complaint.

9 THE CHAIR: But in any event, it was
10 discussed that it is the appearance of you, as
11 a judge -- not to Mr. Melnick, not to someone
12 else, but to the community as a whole. As I
13 looked at the documents you handed me, and I
14 specifically look at the disqualification and
15 disclosure document from the Florida Judicial
16 College, Canon 3(e)(1) says, "A judge is
17 required" -- required -- "to disqualify herself
18 or himself if the judge or the judge's spouse
19 is known by the judge to have more than a de
20 minimis interest that could be substantially
21 affected by the proceeding or is to the judge's
22 knowledge likely to be a material witness in
23 the proceedings."

24 You then went and made your wife a
25 material witness, you swore her in, and that's

1 after Mr. Melnick objected to the whole
2 proceeding. And you come in with a technical
3 defense citing cases. And when you left last
4 time you were advised that it was the spirit of
5 being a judge, being Caesar's wife. And now,
6 in retrospect, you bring in case after case and
7 a litany of other judges who did the same thing
8 as some type of defense.

9 And, frankly, I don't care about you
10 apologizing to Mr. Melnick. But this is yet
11 another embarrassment to the judiciary. And
12 whether you meant it or not, it appears -- it
13 appears, at least to this speaker, that you
14 were attempting to advance your wife's
15 political cause by somehow establishing a
16 record of some type that could be used in a
17 further campaign and then saying, "Well, once
18 I started this, I knew I would recuse myself."

19 So it's a long preamble to my question.
20 What part of not getting involved in your
21 wife's election don't you understand?

22 THE RESPONDENT: Okay. I'm very careful
23 about my wife's election. I don't go anywhere
24 near her campaigning. I won't go to public
25 function if she's wearing a badge that she's

1 running. I stay very far away from her
2 campaign. I don't talk to anybody about her
3 election.

4 The photograph incident, I didn't realize
5 there was a problem with the photo. The second
6 I realized there was a problem with the photo,
7 that photo was removed the next day. I didn't
8 get notification from the JQC about that photo
9 until about three months after that photograph
10 was taken off. So I didn't do that in response
11 to the JQC. The day I figured out that there
12 was a problem with that photo, I, on my own,
13 removed that photograph from her website.

14 As far as being at the recount, the
15 rules -- and I never got brought up to the JQC
16 about appearing at the recount, that was
17 never -- but it's my understanding of the rules
18 that a judge can attend a public function
19 regarding a judge's private interest. And I
20 had every right to appear at the recount
21 because I had a private interest. And that
22 recount's not a political function, that's a
23 public function, just like a court hearing. If
24 my wife is being sued in court, I have a right
25 to be at that hearing and watch.

1 I didn't say one word at that recount. I
2 didn't open my mouth at that recount. I was
3 there to watch and support my wife, who was
4 going through a very difficult time in her
5 life. I mean, I don't know if you have any
6 idea how tough it is to be involved in a
7 recount. I mean, it turned into a circus. And
8 she had nobody. And I was there at the recount
9 with her.

10 I did not open my mouth once. I didn't
11 talk to anybody at that recount. I was just
12 physically there with her. And that's all I
13 did.

14 I understand about perception. I handled
15 this badly. I know I handled this badly. I
16 understand its perception. I don't think
17 legally I did anything wrong, and that's why I
18 gave you the cases. It's not -- I'm not an
19 expert on the area of disqualification. I've
20 only filed one motion to disqualify in 20 years
21 as a lawyer.

22 I know it's bad. And I've granted every
23 single one. I just -- and I got frustrated.
24 He came into court and gave me three at once,
25 and I just wanted to clear it up so that he

1 wouldn't file them in the future. It really
2 had nothing to do with my wife, it was more
3 just clearing up, "Steve, why are you doing
4 this? I'm your friend. I don't understand."

5 And that's where I was coming from. It
6 really had nothing to do with my wife.

7 THE CHAIR: Dr. Haber?

8 Judge Wolf?

9 JUDGE WOLF: I can't let a couple of
10 things go. You know, you came in here saying
11 you were trying to hold this hearing so you
12 could get over the friendship -- or get your
13 friendship back with this guy. And that's not
14 true. It is directly in conflict with what you
15 just said. "I held a hearing to get him to
16 stop filing these motions." That was the
17 reason you held this hearing. And that is
18 inappropriate for getting someone to stop
19 filing motions. So you're digging yourself a
20 bigger grave.

21 THE RESPONDENT: Can I respond?

22 JUDGE WOLF: No.

23 All I want to -- well, I'll let you
24 respond. The reason you held that hearing was
25 to get him to stop filing motions, wasn't it?

1 Now you can respond.

2 THE RESPONDENT: Okay. I thought that
3 the reason he was filing the motions was
4 because he was afraid that I would retaliate
5 against him. And we were friends, and if he
6 understood that we had a friendship and maybe
7 he misunderstood what was going on between him
8 and my wife, that he wouldn't -- that it would
9 be okay.

10 And that's what I thought when I left the
11 hearing, it's all cleared up, he heard her
12 side, she heard his. "And now you don't have
13 to be afraid that I couldn't be fair in your
14 case."

15 I thought that. Honestly, I -- I don't
16 have a problem recusing myself on cases. I
17 don't own these cases. I have no stake in
18 these cases. I just -- it's just frustrating
19 when somebody's your friend and thinks that you
20 can't be fair. You know, I'm sure that's
21 happened to you. And it's just frustrating.

22 And I was friends with Steve Melnick, so
23 -- but you're right, I mean, I didn't want him
24 to continually file them. But the reason he
25 was filing them was because he didn't think I

1 could be fair, and that was more a friendship
2 issue --

3 JUDGE WOLF: Please be truthful to
4 yourself. You were upset that he was filing
5 these motions, and that's why you had this
6 hearing. I mean, you may be lying to yourself
7 right now. You said that a couple of times,
8 and that's what you meant.

9 THE RESPONDENT: I mean, if you read the
10 transcript on that page, it says we've been
11 friends for 20 years.

12 JUDGE WOLF: Okay. Now --

13 THE RESPONDENT: If you contact him, you
14 can ask him what we talked about on the phone
15 right after when I called and apologized.

16 JUDGE WOLF: I don't know what this
17 committee is going to do, but I think maybe
18 just educate you a little bit. You know the
19 difference between an evidentiary hearing and a
20 hearing that is just for people to argue the
21 law?

22 THE RESPONDENT: Yes.

23 JUDGE WOLF: Tell me how you come in
24 here -- look at page eight of this document,
25 and it says the only thing, you should limit

1 argument to the issue of whether the stated
2 grounds are legally sufficient.

3 So, first of all, you probably shouldn't
4 have a hearing. But if you do, you should
5 limit it to arguments on the substance of the
6 motion. How do you even think about justifying
7 having an evidentiary hearing based on what's
8 there?

9 I mean, are you trying to tell me that
10 they taught you at judicial college that you
11 can have an evidentiary hearing?

12 THE RESPONDENT: I'm going by what I
13 learned. You have to remember what's happening
14 at judicial college, they're giving you 2,000
15 pages' worth of material in five days that are
16 going quickly. I didn't review this before I
17 had the hearing with Mr. Melnick.

18 JUDGE WOLF: No, but you came in here
19 today and you tried to use this as a legal
20 justification for what you did.

21 THE RESPONDENT: Because this is what I
22 remember that they taught --

23 JUDGE WOLF: Okay. But I go back to my
24 question. Do you know the difference between
25 an evidentiary hearing and a legal argument?

1 THE RESPONDENT: I do.

2 JUDGE WOLF: Reading that, doesn't this
3 reflect that you should only have legal
4 argument? Don't have the hearing, but if you
5 do, you should limit argument to the issue?

6 THE RESPONDENT: You're right.

7 JUDGE WOLF: I don't want you to walk out
8 of here thinking that you can have evidentiary
9 hearings on disqualification cases.

10 Also, at the very beginning of this
11 hearing, Mr. Melnick said, "How do you expect
12 me to cross-examine your wife? How do you
13 expect me to argue with her and challenge her
14 credibility?"

15 I mean, in your argument about trying to
16 appease Mr. Melnick -- or not appease, but
17 clear things up -- how could you think it was
18 going to clear things up when he, at the very
19 beginning of the hearing, says to you, "How am
20 I going to cross-examine your wife?"

21 THE RESPONDENT: Okay. I knew that I
22 wasn't going to deny his motion, and I knew I
23 wasn't going to make any findings, I just
24 wanted him to hear her side, and that's why I
25 just let it go, because I knew I was granting

1 it. It was automatic. I knew once I started
2 that hearing, I was automatically granting it,
3 that I couldn't make any factual findings.

4 JUDGE WOLF: So maybe the second
5 argument, the reason for you having the
6 hearing was to allow your wife to talk to
7 Mr. Melnick. Do you think that's an
8 appropriate use of a court hearing?

9 THE RESPONDENT: That's why I make -- I
10 definitely made a mistake there. I mean,
11 that's what I said, in looking back, I just
12 used poor judgment. Really, I should have --

13 JUDGE WOLF: You said you used poor
14 judgment, but yet you came in here and tried to
15 justify and you tried to say, "The only reason
16 that I tried to do this was to make things up
17 with Mr. Melnick." Now, either you're lying to
18 us or you're lying to yourself. Because I kind
19 of resented you coming in here and trying to
20 justify this, I really did, much like the
21 chairman.

22 I have nothing further.

23 THE CHAIR: Dr. Maxwell?

24 DR. MAXWELL: Good morning.

25 THE RESPONDENT: Good morning.

1 DR. MAXWELL: Just in companion with what
2 my colleague said --

3 THE CHAIR: Speak up if you could.

4 DR. MAXWELL: Specifically, I've been
5 listening to what my colleague had stated in
6 relationship, that having your wife in the
7 courtroom with you sitting on the bench and
8 going through the judicial process in
9 determining whether or not you're going to
10 disqualify yourself, you didn't find that
11 totally incongruous at all, based on not only
12 your legal education, but also based on the
13 fact of what you learned in judicial school?

14 THE RESPONDENT: I didn't -- obviously, I
15 didn't think there was anything wrong with it,
16 and that's why I did it. If I did think there
17 was something wrong with it, I wouldn't have
18 done it. I don't -- I -- that's -- listen, I
19 think the biggest mistake I made was having my
20 wife in there testifying.

21 DR. MAXWELL: And I guess the next
22 question is how did you -- if you look at seven
23 of 47, specifically 4(d), how did you
24 interpolate that that would be discretionary on
25 your part?

1 THE RESPONDENT: Because it says, "Does
2 not require a hearing," which means you don't
3 have to have a hearing, which means you can
4 have a hearing.

5 DR. MAXWELL: Okay. I guess the bottom
6 line with me is -- is this -- I'm not an
7 attorney, but it would seem to me based on the
8 fact scenario with your wife being in the
9 hearing and so forth, did you ever stop to
10 think, well, maybe we need to sit down
11 somewhere outside of this venue and get to the
12 root of the problem that you were having other
13 than a judicial issue? Isn't that what really
14 this is all about?

15 THE RESPONDENT: The problem with doing
16 that is that if I had a meeting in my office
17 with Steve and my wife and we just talked it
18 out and Steve was not happy with that, then he
19 would say, "Well, you know, you did it in
20 secret. You did it in hiding. You're bullying
21 me."

22 And there's no public record. I mean, I
23 did it out in the open. And honestly, if I
24 thought there was anything wrong with it, I
25 never would have done it out in the open. I

1 mean, I would have to be a complete idiot. I
2 really thought that I was just doing the right
3 thing. I was just trying to clear it up.

4 DR. MAXWELL: But why would you -- again,
5 in relationship to what my colleague said, why
6 would you use a courtroom to do that, in your
7 robe, sitting up there as a judge? That's the
8 question.

9 THE RESPONDENT: I was wrong.

10 DR. MAXWELL: I have nothing else.

11 THE CHAIR: Judge Silberman?

12 JUDGE SILBERMAN: Judge, Canon 3(e)(1)
13 states that, "A judge shall disqualify himself
14 or herself in a proceeding in which the judge's
15 impartiality may reasonably be questioned,
16 including, but not limited to, instances
17 where" -- in subparagraph four -- actually it's
18 (a)4, "The judge or the judge's spouse or a
19 person within the third degree of relationship
20 to either of them where the spouse of such a
21 person is, to the judge's knowledge, likely to
22 be a material witness in a proceeding."

23 So you understand you shall disqualify
24 yourself if your wife's going to be a material
25 witness. Correct?

1 THE RESPONDENT: Correct.

2 JUDGE SILBERMAN: 3(a) of the code, "A
3 judge shall hear" -- I'm sorry, 3(b)(1), "A
4 judge shall hear and decide matters assigned to
5 the judge except those in which
6 disqualification is required."

7 Do you understand that sentence?

8 THE RESPONDENT: I do.

9 JUDGE SILBERMAN: So why don't you
10 describe for the Commission how those two
11 provisions fit together and support your
12 conducting an evidentiary hearing in which your
13 wife is a witness.

14 THE RESPONDENT: It doesn't. Although
15 the only thing I could say is that I did
16 disqualify myself from the hearing. There was
17 no harm -- well, there's harm to the community.
18 I don't want to say that there's no harm, but,
19 I mean, but Mr. Melnick wanted
20 disqualification, I granted his
21 disqualification. I mean, my mistake obviously
22 was having the hearing. But that doesn't --

23 JUDGE SILBERMAN: Couldn't a person
24 looking at this say or conclude that you
25 conducted the hearing in order to intimidate

1 him?

2 THE RESPONDENT: Someone could, but I am
3 telling you that --

4 JUDGE SILBERMAN: And your responsibility
5 as a judge is not to put yourself or the
6 judiciary in that position, isn't it?

7 THE RESPONDENT: Yes.

8 JUDGE SILBERMAN: Why was your wife at
9 this hearing?

10 THE RESPONDENT: I asked her to be there.

11 JUDGE SILBERMAN: So you provided for a
12 witness to attend an evidentiary hearing that
13 you were going to conduct?

14 THE RESPONDENT: (Moving head up and
15 down..)

16 JUDGE SILBERMAN: I can't hear you.

17 THE RESPONDENT: Yes. Yes.

18 JUDGE SILBERMAN: She was not under
19 subpoena?

20 THE RESPONDENT: No.

21 JUDGE SILBERMAN: This is an evidentiary
22 hearing on a motion to disqualify in the case
23 of State versus Gibbs. Where's the prosecutor
24 in this hearing?

25 THE RESPONDENT: They were in the

1 courtroom. They might not have announced, but
2 they were in the courtroom.

3 JUDGE SILBERMAN: Did you invite them to
4 participate?

5 THE RESPONDENT: They were just sitting
6 at the prosecutor's table.

7 JUDGE SILBERMAN: Did you ask them if
8 they had any questions of the witness?

9 THE RESPONDENT: No.

10 JUDGE SILBERMAN: You start out the
11 hearing by asking your wife if she had the
12 opportunity to read the motion. Correct?

13 THE RESPONDENT: Correct.

14 JUDGE SILBERMAN: Mr. Melnick then
15 objects relating that you're going to have to
16 make -- if you go forward with the hearing,
17 you're going to be making determinations as to
18 credibility. Correct?

19 THE RESPONDENT: Correct.

20 JUDGE SILBERMAN: And, in fact, you asked
21 questions of your wife. Is that correct?

22 THE RESPONDENT: That's correct.

23 JUDGE SILBERMAN: You indicated that you
24 knew you were supposed to recuse in this
25 matter?

1 THE RESPONDENT: Correct.

2 Well, can I just -- I knew once I held
3 the hearing, I was required to recuse. I
4 didn't -- and I knew that the whole purpose of
5 having the hearing, again, was to flush things
6 out. But once I started the hearing, I knew I
7 had to recuse.

8 JUDGE SILBERMAN: Was the motion legally
9 sufficient to require your recusal?

10 THE RESPONDENT: No.

11 JUDGE SILBERMAN: Why didn't you deny it?

12 THE RESPONDENT: At the time I thought --
13 I thought it was legally sufficient at the
14 time. I also thought I hadn't done anything
15 wrong at the time. When I got this complaint,
16 the notice of investigation, I read the rule of
17 judicial administration, which I wasn't aware,
18 and I saw that I couldn't have the hearing.
19 And I realized at that point that I made a
20 mistake. But then in preparing for this
21 hearing, I did some research. I'm more
22 familiar with disqualification now. And now my
23 opinion is that the motion is not legally
24 sufficient. At the time my opinion was that it
25 was legally sufficient.

1 JUDGE SILBERMAN: At the time you
2 concluded it was legally sufficient?

3 THE RESPONDENT: (Moving head up and
4 down.)

5 JUDGE SILBERMAN: I can't hear you.

6 THE RESPONDENT: Yes. At the time --

7 JUDGE SILBERMAN: So why --

8 THE RESPONDENT: At the time I thought it
9 was legally sufficient.

10 JUDGE SILBERMAN: If you thought it was
11 legally sufficient, why didn't you recuse
12 yourself on the spot?

13 THE RESPONDENT: Because I thought that I
14 had the right to hold a hearing based on the
15 disqualification disclosure packet from the
16 judicial college. I didn't know that it was
17 required under the Rule of Judicial
18 Administration. I was looking at -- you know,
19 again, "Do not hold a hearing, because it
20 doesn't require a hearing," which means it's
21 discretionary. And then it says, "If you do
22 hold a hearing, you must assume the facts are
23 true, and that just by holding a hearing, that
24 alone will require you to disqualify yourself."
25 And that's why I held the hearing.

1 JUDGE SILBERMAN: Well, you said you
2 believed it to be legally sufficient?

3 THE RESPONDENT: Correct.

4 JUDGE SILBERMAN: In which case?

5 I don't understand the purpose of the
6 hearing, other than look at page seven, 4(a)
7 "Expressing displeasure with attorney for
8 bringing motion to disqualify may be considered
9 intimidation."

10 THE RESPONDENT: Right. I didn't express
11 any displeasure.

12 JUDGE SILBERMAN: Conducting a hearing on
13 a matter that you already determined required
14 you to disqualify yourself is not intimidation?

15 THE RESPONDENT: It could be. And I
16 tried to be -- you have to understand, I tried
17 to be nice to him during this hearing. I
18 wasn't going after him and making him feel bad
19 because he was filing the motion. I was just
20 trying to flush out the facts. And I said that
21 in the hearing, "I'm just trying to flush
22 everything out so that everybody knows."
23 Because we were friends before, we can still be
24 friends. And that's why I did it.

25 I didn't study -- you have to understand,

1 I didn't study this disqualification and
2 disclosure. I just went by what I learned at
3 judicial college two years earlier. You know,
4 I -- it's impossible to know everything they
5 teach you at judicial college. They give you
6 2,000 pages' worth of material for Session A,
7 they give you 2,000 pages of material for
8 Session B, and we're going to make mistakes.

9 THE CHAIR: I hate to interrupt. When
10 did you go to judicial college?

11 THE RESPONDENT: I went March, I guess,
12 2007 and --

13 THE CHAIR: Did you just put these in a
14 closet and not read them?

15 I mean, I don't want to hear "2,000
16 pages."

17 I'm sorry, Judge.

18 JUDGE SILBERMAN: As we sit here today,
19 do you agree that you violated Canons 3, 3(b),
20 the provisions that we went through?

21 THE RESPONDENT: Yes.

22 JUDGE SILBERMAN: Canon 2(a), "A Judge
23 shall respect and comply with the law and shall
24 act at all times in the manner that promotes
25 public confidence and the integrity and

1 impartiality of the judiciary." Are you
2 familiar with that provision?

3 THE RESPONDENT: I am since -- yes. I --

4 JUDGE SILBERMAN: Do you believe that
5 your conduct is in violation of Canon 2(a)?

6 THE RESPONDENT: Yes.

7 JUDGE SILBERMAN: Canon 2(b), which I
8 don't believe was on the notice of
9 investigation, but I do think it's pertinent,
10 "A judge shall not allow family, social,
11 political, or other relationships to influence
12 the judge's judicial conduct or judgment."

13 Do you think that someone could look at
14 your conduct and say, "Sounds like there's a
15 problem with 2(b) as well"?

16 THE RESPONDENT: You know, I just -- I'm
17 going to say yes. I just -- you know, I made
18 it very careful that I would not -- I didn't
19 comment on my wife's testimony, I didn't say,
20 "My wife is right and you're wrong. I believe
21 my wife." I just -- I didn't go anywhere near
22 there. I just backed off and said, "I'm not
23 making any rulings. Your motion's granted."

24 I just tried to clear this matter up. We
25 were friends before. And that's what I did.

1 JUDGE SILBERMAN: On page 13 of the
2 transcript, after there's a dialogue again with
3 Mr. Melnick, you then state, "I don't think I
4 have to make any kind of ruling as to the
5 factual dispute." Is that correct?

6 THE RESPONDENT: Correct.

7 JUDGE SILBERMAN: In which case, again,
8 there was no legally justifiable purpose for
9 this hearing. Is that correct?

10 THE RESPONDENT: Yes. Yeah, there's no
11 legally justifiable purpose, correct. It was
12 more a moral thing.

13 JUDGE SILBERMAN: I was --

14 THE RESPONDENT: It was personal. It
15 wasn't -- but it wasn't personal in a negative
16 way. I wasn't attacking the man. I was
17 friends with the man. It's hard to explain
18 when you're a judge and you're friends with
19 people, and then because of an election that
20 has nothing to do with you, now people are
21 attacking you.

22 But I realize I had no business holding
23 that hearing. And if it looks like because I
24 held the hearing, that alone is intimidation,
25 that really wasn't -- that thought never

1 crossed my mind. I'm not -- I'm so polite to
2 everybody that steps into the courtroom.

3 I mean, if you contact any prosecutor,
4 any public defender, anybody that's ever
5 appeared before me, I'm so polite to everybody.
6 I'm not an antagonistic person. I treat
7 everybody with respect. If you're a clerk,
8 court maintenance person, everybody I treat
9 with respect in that courthouse. I'm not one
10 of these people that beats up on anybody.

11 I get cursed at by inmates all the time.
12 I don't respond. I just understand that you
13 don't like your sentence or you think you
14 should be out on bond. I'm very easygoing.
15 I'm not the type of guy that's going to go in
16 there and berate people. I've never done it
17 before. And that wasn't my purpose. I didn't
18 want -- I wanted Melnick to feel like,
19 "Tomorrow when you come to court and you're in
20 front of me, you can feel perfectly fine that
21 you're going to get a fair and impartial judge,
22 with no animosity towards you whatsoever."

23 And that was my purpose, and I had a bad
24 misjudgment.

25 JUDGE SILBERMAN: If you agree there was

7

1 no legally justifiable reason to conduct this
2 hearing, then would it be fair for this
3 Commission to conclude that you used the
4 courtroom and the power of your office for a
5 personal agenda?

6 THE RESPONDENT: I'd say no.

7 JUDGE SILBERMAN: Why not?

8 THE RESPONDENT: Because the reason I
9 held that hearing was so that Melnick in the
10 future would feel that he could come before me
11 and be comfortable that he's going to get a
12 fair and impartial judge. And by being
13 exposed -- by just flushing out this incident,
14 whatever he was upset about, by just talking
15 about it in an open forum, I thought that that
16 would get him past his fear that I couldn't be
17 fair. It wasn't -- it had nothing to do with
18 personal. That's all that it was.

19 JUDGE SILBERMAN: So when you said
20 earlier, "If he heard my wife speak in person
21 or in the courtroom" -- or, "If he heard her,"
22 I think is the way you said it -- "he would
23 realize there was no problem."

24 THE RESPONDENT: Because I thought he had
25 misinterpreted something that my wife had said

1 to him.

2 JUDGE SILBERMAN: So you were using the
3 courtroom for your wife's agenda?

4 THE RESPONDENT: No. No. I just thought
5 the reason he was fearful of me was because he
6 thought my wife had called him and said,
7 "You're making a big mistake." And I thought
8 that if he heard that he mis- -- maybe he
9 misinterpreted that statement, and that's the
10 reason why he felt that I couldn't be fair, and
11 if he understood that that wasn't what
12 happened, then he could come in and be -- and
13 think that I could be fair. It had nothing to
14 do with my wife or her honor. That had nothing
15 to do with it. Nothing to do with it.

16 JUDGE SILBERMAN: Except for the fact
17 that the only one who called your wife as a
18 witness was you?

19 THE RESPONDENT: Well, I didn't want to
20 call Mr. Melnick as a witness because I didn't
21 want him to think I was antagonizing him.

22 JUDGE SILBERMAN: But there was no need
23 for any witness, because it wasn't a factual
24 dispute. Correct?

25 THE RESPONDENT: I wasn't thinking. I

1 just wasn't thinking.

2 JUDGE SILBERMAN: You provided to us a
3 list of, it looks like, six cases in your
4 materials on the page entitled, "Argument as to
5 the Legal Sufficiency of the Motion."

6 THE RESPONDENT: Correct.

7 JUDGE SILBERMAN: Which of those cases
8 provides support for the idea that you can
9 conduct an evidentiary hearing on a recusal
10 motion?

11 THE RESPONDENT: I don't know if they
12 held evidentiary hearings in these cases or if
13 they just held argument. I don't know.

14 JUDGE SILBERMAN: I don't have anything
15 else.

16 THE CHAIR: Judge Freeman?

17 JUDGE FREEMAN: What time did you hold
18 this hearing at? August 6th was the date.

19 THE RESPONDENT: This was about 1:30,
20 1:45.

21 JUDGE FREEMAN: Were you having a regular
22 motion calendar call at that time?

23 THE RESPONDENT: I held -- I had about a
24 hundred cases on my docket that morning. What
25 I do is I --

1 JUDGE FREEMAN: I want to specifically
2 establish --

3 THE RESPONDENT: Okay.

4 JUDGE FREEMAN: -- was this part of
5 your --

6 THE RESPONDENT: No. No.

7 JUDGE FREEMAN: -- docket call?

8 THE RESPONDENT: No. What happened was
9 -- this wasn't on the docket.

10 JUDGE FREEMAN: Wait a minute. Okay.
11 That's all I wanted, yes or no.

12 THE RESPONDENT: Okay.

13 JUDGE FREEMAN: Did you have any other
14 cases set at 1:30?

15 THE RESPONDENT: Yes.

16 JUDGE FREEMAN: How many other people
17 were in the courtroom?

18 THE RESPONDENT: Five.

19 JUDGE FREEMAN: Were the other attorneys
20 and clients in the courtroom?

21 THE RESPONDENT: I have -- I have no
22 recollection.

23 JUDGE FREEMAN: And you said the State
24 attorneys were there?

25 THE RESPONDENT: The State attorney was

1 there.

2 JUDGE FREEMAN: How many?

3 THE RESPONDENT: One or two.

4 JUDGE FREEMAN: What level of experience
5 was that State attorney? Do you know how long
6 the State attorney had practiced law?

7 THE RESPONDENT: Probably about three
8 years. I think it was --

9 JUDGE FREEMAN: Pardon me?

10 THE RESPONDENT: The more experienced was
11 probably -- excuse me -- about three years.

12 JUDGE FREEMAN: What about the least
13 experience?

14 THE RESPONDENT: Year and a half to two
15 years.

16 JUDGE FREEMAN: Do you have any
17 recollection of what their demeanor was?
18 Uncomfortable?

19 THE RESPONDENT: No. I don't think they
20 were paying much attention.

21 JUDGE FREEMAN: Trying not to while they
22 were there?

23 THE RESPONDENT: I don't -- I don't think
24 anybody was intimidated by the fact that I was
25 having this hearing.

1 JUDGE FREEMAN: So they were not trying
2 to participate. Right?

3 THE RESPONDENT: No. No, they weren't
4 trying to participate.

5 JUDGE FREEMAN: Had the State Attorney's
6 Office ever request that you have that hearing?

7 THE RESPONDENT: No.

8 JUDGE FREEMAN: Had the State Attorney's
9 Office ever objected to the motion to recuse?

10 THE RESPONDENT: No.

11 JUDGE FREEMAN: Thank you.

12 THE CHAIR: Mr. Morales?

13 MR. MORALES: Your Honor, one thing.

14 Obviously, what's legally sufficient, for a
15 layperson, I don't -- I'll leave that to the
16 judges and the lawyers, but the fact that you
17 happened to go to lunch with your wife that day
18 and you said, "Oh, why don't you come on by?
19 We're going to have this little hearing," do
20 you think that's appropriate?

21 THE RESPONDENT: I didn't -- I don't --
22 it's not -- the whole thing is not appropriate.
23 The fact that I had the hearing I know is not
24 appropriate. Probably not.

25 MR. MORALES: Have you ever heard of

1 another judge seeing someone at lunch and say,
2 "Hey, I'm going to have a hearing after lunch.
3 Why don't you come by and testify?"

4 THE RESPONDENT: No.

5 MR. MORALES: Okay. You thought you
6 should have had this hearing?

7 THE RESPONDENT: At the time, yes; now,
8 no. But --

9 MR. MORALES: You're going to take a
10 little time the next time and think about what
11 you're doing?

12 THE RESPONDENT: It wasn't my intent --
13 you have to understand, it wasn't my intent. I
14 wouldn't have called the guy like a couple of
15 days later and said, "I'm sorry." I told him
16 the whole thing blew up. My intent was just to
17 repair a friendship. I just --

18 MR. MORALES: Repairing your friendship
19 seems to work a lot better when you're sitting
20 down talking to somebody over a cold beer or --
21 either that or just sitting in your chambers,
22 "Hey, let's talk about this."

23 THE RESPONDENT: I know. But if it goes
24 bad, then they're saying you're berating them
25 in chambers. I just should have let it go and

1 just dropped it. I mean, this thing says,
2 "DON'T TAKE IT PERSONALLY. DON'T TAKE IT
3 PERSONALLY. DON'T TAKE IT PERSONALLY."

4 And it's easy to write that and -- and if
5 I didn't know the guy, I wouldn't have cared.
6 That's the thing. If I wasn't friends with him
7 for so long, I wouldn't have cared. But it's a
8 friend. I don't understand how somebody
9 could --

10 MR. MORALES: From me reading this, this
11 had a lot more to do with your wife than your
12 friend.

13 THE RESPONDENT: She was the reason that
14 he was filing the motion, and that's why she's
15 in there, is to clear things up.

16 MR. CARDILLO: You would agree that
17 Timpano's would have been a better site to do
18 this.

19 THE RESPONDENT: Yeah, I don't --

20 MR. CARDILLO: At Timpano's with your
21 wife and your good friend is a better site?

22 THE RESPONDENT: Apparently, he's not a
23 good friend because I'm sitting here, but --

24 MR. CARDILLO: Was a good friend?

25 THE RESPONDENT: I don't even think -- to

1 be honest with you, I don't even think he filed
2 the JQC complaint.

3 MR. CARDILLO: Do you agree that --

4 THE RESPONDENT: Yes. Timpano's would
5 have been much better.

6 MR. CARDILLO: -- Timpano's would have
7 been a better site, both for the appearance
8 right then and there and to everybody else?

9 THE RESPONDENT: Absolutely.

10 MR. CARDILLO: Okay.

11 DR. HABER: Judge, when did you realize
12 or conclude that you made a mistake? When did
13 this come to you?

14 THE RESPONDENT: I realized I made a
15 mistake when I got the notice of investigation.
16 Because I had a meeting with the chief criminal
17 judge, Ilona Holmes, and she told me, "You
18 cannot have a hearing on the motion for
19 disqualification."

20 And I told her that that's not true,
21 because in judicial college we learned that you
22 can have a hearing, but if you have the
23 hearing, you have to grant it. I never made a
24 distinction -- I never thought about a
25 distinction between -- with testimony or

1 without -- I mean, under oath or not under
2 oath. I never even thought about that.

3 And then -- but I still thought I was
4 right until I got that letter, and when I saw
5 the Judicial Rule of Administration -- you
6 know, Judicial Rule of Administration, and I
7 looked at the rule, I knew at that point, you
8 know, she was a hundred percent right and I was
9 a hundred percent wrong.

10 DR. HABER: Okay. So it would be fair to
11 say, Judge, that when you walked into this room
12 this morning, you knew that you were wrong?

13 THE RESPONDENT: No. Because when I was
14 preparing for this hearing and I started doing
15 research, at that point I started finding cases
16 to show that his motion was not legally
17 sufficient. I did think it was legally
18 sufficient at the time I had the hearing. And
19 I know that doesn't help me, but that's the
20 truth.

21 But having done the research, and now
22 being more familiar with disqualifications than
23 I was at the time, I do not think his motion
24 was legally sufficient, and I should have just
25 done an order, you know, denying it as legally

1 insufficient and just, you know, cite the
2 cases, and that's it.

3 DR. HABER: So when you came in -- I'm
4 just trying to understand. When you came in
5 this morning, did you or did you not know that
6 you really had done something wrong, period?

7 THE RESPONDENT: No. I thought I was
8 legally allowed to hold the hearing. I mean, I
9 didn't think of what you've -- what you all
10 have asked me. I mean, based on the questions
11 you've asked me and your analysis, I look back
12 and say, "I'm wrong." Coming into this
13 hearing, I really thought I was right. And I
14 wouldn't --

15 DR. HABER: Thought you had
16 justification?

17 THE RESPONDENT: I thought I had the
18 justification. And I have the case law.

19 DR. HABER: Just one other question.

20 THE RESPONDENT: Yes, sir.

21 DR. HABER: You said several times that
22 within a few days you called Mr. Melnick and
23 apologized.

24 THE RESPONDENT: Correct.

25 DR. HABER: If you thought everything you

1 did was right and good, why did you call to
2 apologize?

3 THE RESPONDENT: Because he was upset. I
4 heard that he was upset that I held the
5 hearing. And whether I was right or not -- it
6 wasn't a matter of being legally right or
7 legally wrong; again, it was about the
8 friendship. And I called him up and said, "You
9 know, things got out of hand" -- to him it did,
10 not to me. I thought -- I thought,
11 Everything's great, when I walked out of this
12 hearing. He's going to be fine. He's going to
13 think I'm going to be a fair judge for him.
14 But when I found out he wasn't, I called him up
15 and apologized. It had nothing to do with
16 legally right or legally wrong, it was
17 personally right, personally wrong.

18 DR. HABER: I see. Okay. Thank you.

19 THE CHAIR: Judge Wolf?

20 JUDGE WOLF: One question.

21 You said it a couple of times just now
22 that you thought you were right in holding this
23 hearing before you came in and before we
24 started asking you questions.

25 THE RESPONDENT: Correct.

1 JUDGE WOLF: Judge Silberman read you
2 some -- right out of the Code of Judicial
3 Conduct -- I know you said you put the
4 materials from the judicial college aside. Had
5 you never read the Code of Judicial Conduct?

6 THE RESPONDENT: I have.

7 JUDGE WOLF: Did you even think of
8 reading it before you came in here today to see
9 whether you were right or wrong?

10 THE RESPONDENT: I did not read it, the
11 rules, before coming in today, no.

12 JUDGE WOLF: You keep on referring to
13 Rules of Judicial Administration and all this
14 other stuff, and you did not read the Code of
15 Judicial Conduct?

16 THE RESPONDENT: Because when I looked at
17 the notice of investigation, it was very
18 specific as to my right to hold a hearing, and
19 I was thinking legally, did I legally have the
20 legal basis to have the hearing.

21 JUDGE WOLF: Okay. I have nothing
22 further.

23 DR. MAXWELL: Can I just ask one follow-
24 up?

25 Judge, when you went to the chief judge,

1 did you make the chief judge aware of the fact
2 that your wife was in on that hearing and
3 participating in that hearing?

4 THE RESPONDENT: She knew.

5 DR. MAXWELL: She did?

6 THE RESPONDENT: She knew.

7 DR. MAXWELL: How did she know?

8 THE RESPONDENT: Because Steve Melnick
9 told her.

10 DR. MAXWELL: Okay.

11 MR. SCHNEIDER: Judge, let me see if I --
12 you kind of jumped over the context of how this
13 came about, and I'd like to ask you about that.

14 Did I hear correctly that on the day that
15 this occurred, Mr. Melnick had served you with
16 three motions to recuse?

17 THE RESPONDENT: Correct.

18 MR. SCHNEIDER: I wrote down 12:20.

19 THE RESPONDENT: 12:20.

20 MR. SCHNEIDER: Okay. So we're into the
21 lunch hour at that point?

22 THE RESPONDENT: Right. Well, my docket
23 ended about 12:30.

24 MR. SCHNEIDER: Okay. And so that was
25 this case and two other cases?

1 THE RESPONDENT: Correct.

2 MR. SCHNEIDER: Okay. And do you by any
3 chance recall which cases those were?

4 THE RESPONDENT: I don't --

5 MR. SCHNEIDER: We could find out. I
6 mean --

7 THE RESPONDENT: I could get it for you.

8 MR. SCHNEIDER: All right. And then you
9 said you had lunch with your wife?

10 THE RESPONDENT: Correct.

11 MR. SCHNEIDER: And then you came back to
12 court at 1:30?

13 THE RESPONDENT: Correct.

14 MR. SCHNEIDER: Okay. And when court
15 started back up, you asked your wife about,
16 "Had you read the motions?"

17 THE RESPONDENT: Right.

18 MR. SCHNEIDER: Okay. Or the motion?

19 THE RESPONDENT: Right.

20 MR. SCHNEIDER: And did you -- how did
21 she get access to that motion? Did you have
22 copies and take them to lunch because you knew
23 you were going to see her or --

24 THE RESPONDENT: No. No. I think Mr.
25 Melnick might have given his copy -- she got it

1 right then and there. She had never seen it
2 before.

3 MR. SCHNEIDER: Okay.

4 THE RESPONDENT: I didn't take it to
5 lunch, no.

6 MR. SCHNEIDER: Okay. Did you have a
7 discussion about the fact that you were -- you
8 needed her to come and testify about these
9 motions -- continuing motions to recuse?

10 THE RESPONDENT: I went to lunch with
11 her, and I told her that Steve Melnick had just
12 filed three motions to recuse. And I asked
13 her, "Would you mind coming in at 1:30 so we
14 can have an evidentiary hearing on this."

15 MR. SCHNEIDER: Okay. Was the subject
16 matter brought up, "He's bringing up the same
17 things that we talked about before"?

18 Walk me through about how that -- I know
19 it's husband and wife, so you've got these
20 conversations -- ongoing conversations, and
21 sometimes they're shorthand, but can you give
22 us a flavor as to what she was understanding
23 she was walking into at that point and what
24 you wanted -- why you wanted her to be there?

25 THE RESPONDENT: Sure.

1 MR. SCHNEIDER: You know, all this.

2 THE RESPONDENT: Okay. I have no
3 recollection of that conversation at lunch. I
4 do know that the allegation pertaining to her
5 and the only thing that I thought had merit was
6 that he was alleging that she called him up and
7 said, "You could be in big trouble."

8 MR. SCHNEIDER: Right. And --

9 THE RESPONDENT: Now, I don't know what
10 big trouble means, but to me, if he interprets
11 that as a threat, then it's legally sufficient.
12 I don't think under the case law, just because
13 someone says to you you could be in big
14 trouble, that that --

15 MR. SCHNEIDER: At this point --

16 THE RESPONDENT: But that's her -- that
17 was her only -- that's the only reason I wanted
18 her to come in, was to explain, "What did you
19 say to him when you called him up?"

20 MR. SCHNEIDER: Okay. And at this point
21 you don't have any recollection of the content
22 of your conversation at lunch with your wife?

23 THE RESPONDENT: No. We didn't -- that
24 would have been it. I mean, I didn't get into
25 detail.

1 MR. SCHNEIDER: Well, I mean, I
2 understand. She was aware that -- am I correct
3 in assuming that the substance of this motion
4 is similar to the substance of the previous
5 motions that he had filed?

6 THE RESPONDENT: Yes. So much so that
7 the facts don't even -- right, as far as this
8 one.

9 MR. SCHNEIDER: This is a cut-and-paste
10 deal?

11 THE RESPONDENT: Just name and case
12 number only.

13 MR. SCHNEIDER: Okay. And had you had a
14 discussion with your wife about that
15 previously?

16 Obviously you did --

17 THE RESPONDENT: I probably told her -- I
18 may have told her that, you know, "Steve's
19 filed a motion to recuse based on that
20 conversation."

21 MR. SCHNEIDER: Right.

22 THE RESPONDENT: And that would have been
23 it.

24 MR. SCHNEIDER: Okay.

25 THE RESPONDENT: And I told her whatever

1 other lawyers were doing. "And, oh, by the
2 way, so-and-so filed a motion."

3 MR. SCHNEIDER: Okay. So when these
4 sorts of things happened, that might be some
5 discussion that you might have with your wife?

6 THE RESPONDENT: Correct.

7 MR. SCHNEIDER: Okay. And so whatever
8 discussion you had at lunch there, there was a
9 communication of the fact that "We've got
10 another one of these. Would you mind coming
11 and testifying?"

12 THE RESPONDENT: That was probably
13 exactly what was said.

14 MR. SCHNEIDER: Okay. And was there any
15 hesitation or concern or was there any
16 discussion about -- from her part about
17 propriety of her coming and testifying?

18 THE RESPONDENT: No.

19 MR. SCHNEIDER: Was it just, "Okay. I'll
20 be there," or, "Let's go" --

21 THE RESPONDENT: Yes.

22 MR. SCHNEIDER: Where did you all have
23 lunch? Do you recall?

24 THE RESPONDENT: I believe we had lunch
25 on Las Olas.

1 MR. SCHNEIDER: And --

2 THE RESPONDENT: Not Timpano's.

3 MR. SCHNEIDER: Okay. When you got back
4 to the courthouse and this -- we just get -- it
5 just picks up where it says, "Okay. Let's
6 see." And at that point in time had there been
7 any discussion off the record between you and
8 Mr. Melnick about -- tell us about what that
9 discussion was.

10 THE RESPONDENT: Yeah. What happened was
11 my wife had another hearing at 1:30, so we had
12 to wait for her to show up to court.

13 MR. SCHNEIDER: Okay.

14 THE RESPONDENT: So Steve and I just had
15 a friendly conversation before the start of the
16 hearing.

17 MR. SCHNEIDER: All right. When did this
18 actually occur? I don't see a date or a time
19 on it. What's your best guess as to --

20 THE RESPONDENT: 1:40, 1:45. It wasn't
21 --

22 MR. SCHNEIDER: So it wasn't a long
23 delay?

24 THE RESPONDENT: No. No. No. And it
25 was a friendly conversation before, and we had

1 a friendly conversation after.

2 MR. SCHNEIDER: Okay.

3 THE RESPONDENT: And that's why, frankly,
4 I was surprised that he was upset.

5 MR. SCHNEIDER: What's the -- did you
6 say, "Hey, I spoke to my wife, and she's going
7 to be a witness"?

8 THE RESPONDENT: Yes.

9 MR. SCHNEIDER: Okay. And what was his
10 response to that? Was it the same on the
11 record?

12 THE RESPONDENT: That wasn't off the
13 record. No, that was -- everything was on the
14 record.

15 MR. SCHNEIDER: That was on the record.
16 Was that the first time that he was made aware,
17 other than the fact that she'd be there?

18 THE RESPONDENT: No. No. I told her --
19 I told him that Mardi was coming, and that's
20 why we started late, because we had to wait for
21 her, she was in another hearing.

22 MR. SCHNEIDER: Did you tell him, "Oh,
23 hey, I'm going to call her as a witness" --

24 THE RESPONDENT: No.

25 MR. SCHNEIDER: -- or, "Are you going to

1 call her as a witness?" or --

2 THE RESPONDENT: I have no recollection.

3 MR. SCHNEIDER: I mean, this is --

4 THE RESPONDENT: No recollection about
5 that.

6 MR. SCHNEIDER: All right. And was there
7 any sort of formality, even though this was
8 your friend, saying, "Okay. I, putting on my
9 judge robe, have to tell you that I had a
10 communication with my wife, who is going to be
11 a witness in this case"?

12 THE RESPONDENT: No.

13 MR. SCHNEIDER: You have provided -- and,
14 of course, I have a lot of questions about your
15 legal rationale for what you have come and
16 testified about. You would -- would you not
17 mind making a copy of this -- a copy of this, a
18 submission, a part of the record?

19 THE RESPONDENT: Absolutely.

20 MR. SCHNEIDER: Okay. Thank you for
21 that. I appreciate that.

22 I don't think -- is there anything else
23 about how this, in terms of, factually got
24 going on that day from the 12th -- is there
25 anything factually about how this motion

1 came -- this hearing came to be held from the
2 12:20, when you got served or were made aware
3 of these motions, to the time that the hearing
4 took place that you think would assist the
5 panel factually in knowing what occurred?

6 THE RESPONDENT: No. I just -- I would
7 have addressed it at 12:20, but it was -- we
8 were about 20 minutes past from lunch, and I
9 knew I had to be back at 1:30, so I just asked
10 Mr. Melnick, "Can you come back at 1:30, and
11 we'll address these at that time?"

12 MR. SCHNEIDER: I don't have any other
13 questions.

14 THE CHAIR: And, Judge, did you tell Mr.
15 Melnick at 12:20, "And during the next hour I'm
16 going to have lunch with my wife and discuss
17 this with her and ask her to come back and be a
18 witness"?

19 THE RESPONDENT: I did not.

20 THE CHAIR: How many times in your career
21 have you had an ex parte conversation with
22 witnesses that are going to appear before you
23 and give testimony under oath?

24 THE RESPONDENT: Never.

25 THE CHAIR: That's wrong, isn't it?

1 THE RESPONDENT: It is wrong. I didn't
2 talk about the subject matter of her testimony,
3 I just said, "Can you be here? He filed this
4 motion."

5 THE CHAIR: So it makes it okay?

6 THE RESPONDENT: Nothing I did was okay.

7 THE CHAIR: Does anybody else have
8 anything else?

9 Judge Silvernail?

10 JUDGE SILVERNAIL: Yes.

11 Judge Cohen, what would you now do
12 differently?

13 THE RESPONDENT: Now I would swallow -- I
14 would forget about a friendship and just write
15 either granted or legally insufficient. It's
16 just -- it's not worth it.

17 And I've had so many of these in the
18 past, and I've always just done that. It's
19 just -- you know, I guess I got frustrated
20 after a year and he's keeping some cases, not
21 keeping others.

22 Now, Mr. Gibbs, I sentenced Mr. Gibbs
23 about two weeks ago on his criminal case
24 because the case got transferred to another
25 division. Melnick was not the lawyer. I held

1 a hearing with Mr. Gibbs. I asked him, "Is
2 there any reason in the world why you don't
3 think that I could be fair in this matter?"
4 And I said, "You have carte blanche to say
5 whatever you want to say, and I'll transfer it
6 out." And he said he had no reason to fear
7 that I couldn't be fair in this case. And Mr.
8 Melnick --

9 JUDGE SILVERNAIL: It's just not worth it

10 --

11 THE RESPONDENT: It's not worth --

12 JUDGE SILVERNAIL: When you said, "It's
13 just not worth it," my concern is, you know,
14 you didn't say, "Well, I recognize that it was
15 inappropriate as well."

16 Do you believe that it was inappropriate?

17 THE RESPONDENT: Well, the inappropriate
18 part was that my wife was involved in this
19 matter whatsoever. I think in the future if
20 someone makes an allegation that I can't be
21 fair and impartial, I don't -- and I make a
22 ruling, I don't think it's based on
23 appropriateness. I think in this situation
24 what I did was inappropriate because my wife
25 was involved.

1 JUDGE SILVERNAIL: Well, is that the only
2 reason you think it was inappropriate?

3 THE RESPONDENT: I do think his motion
4 was legally insufficient, and I should have
5 just denied it as legally insufficient and
6 closed the book on that case.

7 JUDGE SILVERNAIL: Okay. That answers my
8 questions. Thank you.

9 THE RESPONDENT: Okay. Thank you.

10 THE CHAIR: Anybody, anything else?

11 Judge, do you want to close, wrap up?

12 THE RESPONDENT: No, I -- I do. I do.

13 At the time I held the hearing, I thought
14 I had the right to hold the hearing based on my
15 misinterpretation on what I learned at judge
16 school. I knew that I had to grant the motion
17 just by the fact that I held the hearing.

18 When I came in here today, I legally
19 still think I could have held the hearing, but
20 for different reasons, because the motion was
21 legally insufficient based on the case law and
22 the research that I've done. I didn't think
23 about the questions that you all have posed me.
24 And I agree with Judge Silberman that I did
25 violate Canons for reasons that I did not think

1 of prior to coming to this hearing.

2 I'm -- I know I'm wrong. I shouldn't
3 have done it. The whole thing smells really
4 bad. I really didn't have the intent to
5 humiliate anybody or embarrass him, I just had
6 good intentions. And, you know, it blew up on
7 me and here I am, the last place I want to be
8 today.

9 THE CHAIR: And so we're clear, your
10 submission consisted of a document called,
11 "Argument as to the Legal Sufficiency of the
12 Motion," with one, two, three, four, five, six
13 cases attached, a Florida Bar News article
14 entitled, "To Recuse or Not to Recuse," dated
15 November 1, 2009, a document entitled, "Judges
16 who contested the factual allegations resulting
17 in reversals," a document with cover sheets
18 with partial attachments called,
19 "Disqualification and Disclosure," published by
20 the Florida Judicial College, and the
21 transcript of a hearing dated August 6th, 2009.
22 Correct?

23 THE RESPONDENT: Yes, sir. That's
24 everything.

25 THE CHAIR: Okay. With that, Judge, I

1 thank you.

2 THE RESPONDENT: Okay. I have an extra
3 set for the other panel members not present.

4 MS. KENNERLY: We have two extra sets up
5 here.

6 THE RESPONDENT: All right. Thank you
7 very much.

8 (Proceedings concluded at 10:50 a.m.)
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

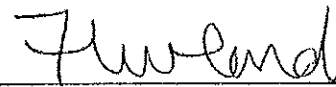
CERTIFICATE OF REPORTER

STATE OF FLORIDA:

COUNTY OF HILLSBOROUGH:

I, Felicia A. Newland, Notary Public in and for the State of Florida at Large, do hereby certify that I reported in shorthand the foregoing proceedings at the time and place therein designated; that the witness herein was duly sworn by me; that my shorthand notes were thereafter reduced to typewriting under my supervision; and that the foregoing pages are a true and correct, verbatim record of the aforesaid proceedings.

Witness my hand and seal November 20, 2009, in the City of Tampa, County of Hillsborough, State of Florida.



Felicia A. Newland
Notary Public
State of Florida at Large



Felicia A. Newland
Commission # DD592985
Expires September 7 2010
Bonded Troy Fair Insurance, Inc. 800-385-7019